IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.893 OF 2003
IN
SUMMARY SUIT NO.2578 OF 1990

Canara Bank .. Appellant.
V/s.
M/s.Shah Engineerings &
Equipments & co. & Others .. Respondents.

Mr.R.S. Tripathi i/b. S. Kanchan & Co. for the appellant.

Mr.Das for respondent Nos.1 to 5.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 8TH SEPTEMBER, 2004.

P.C. :

Admit.

2. Mr.Das, the learned counsel waives service for respondent Nos.1 to 5. The respondent No.6 has not chosen to appear despite service.

3. Looking to the nature of the impugned order, we are inclined to hear and decide the appeal at this stage itself and, accordingly we dispense with printing of paper books and treat the appeal on board for hearing.

4. It is not in dispute before us that the plaintiffs (appellants herein) initially took out a summons for judgment after the writ of summons was served on the defendants. The said summons for judgment was withdrawn by the plaintiffs with liberty to take out fresh summons for judgment. Fresh summons for judgment was not taken out by the plaintiffs. In that event the learned trial Judge could have granted unconditional leave to defend the suit and transfer the cause to commercial causes.

5. The invocation of Rule 227 of the High Court Original Side Rules by the learned trial Judge and dismissal of the suit has worked injustice in the circumstances of the present case.

6. We, accordingly, allow the appeal and set aside the order dated April 3, 2003.

7. The Summary Suit NO.2578 of 1990 is transferred to the category of commercial causes for further proceeding.

8. No costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)